

*Previous Official Action on the merits of most of the claims*

Applicants note that an Official Action on the merits was issued by the Examiner on July 30, 2004. In such Official Action, the Examiner considered the merits of all of the pending claims 1-48, rejecting some and objecting to others. Accordingly, Applicants presume that the Examiner followed proper procedure under the M.P.E.P. by performing a prior art search and evaluating the patentability of all of the claims. Indeed, Applicants note that the detailed nature of the Official Action appears to indicate that complete consideration was given to all of the claims 1-48.

Applicants further note that a Response under 37 CFR 1.111 was filed on November 1, 2004, in which claims 1-5, 8, 11, 12 and 14 were canceled, independent claim 6 was amended to include the subject matter of claim 8, various other claims were amended for clarification, and claims 49-70 were newly presented.

Accordingly, Applicants submit that the subject matter of at least claims 6, 7, 9, 10, 13 and 15-48 has been considered and evaluated on the merits by the Examiner in the previous Official Action. Therefore, Applicants submit that it is clearly improper to apply a restriction between groups which contain various combinations of claims 6, 7, 9, 10, 13 and 15-48, since the Examiner has already considered the merits of the subject matter of these claims. In this regard, Applicants note that each of claims 7, 9, 10, 13 and 15-48 ultimately depend from claim 6.

Applicants further submit that, although claims 49-70 were newly presented in the Response, it appears that subject matter substantially similar to the subject matter recited in these claims was evaluated and considered by the Examiner in preparation of the Official Action. In this regard, Applicants note that on page 2 of the restriction requirement the Examiner grouped claims 49 and 50 with claim 9 (which has previously been considered on the merits); grouped claims 51-54 with claims 27-29 (which have previously been considered on the merits); grouped claims 55-61 with claims 30-39 (which have previously been considered on the merits); and grouped claims 62-70 with claims 40-48 (which have previously been considered on the merits).

Accordingly, Applicants submit that the restriction requirement in this application is improper for at least this reason (particularly with regard to claims 6, 7, 9, 10, 13 and 15-48), and respectfully request that it be reconsidered and withdrawn.

*Dependent claims cannot be characterized as directed to subcombinations*

The Examiner has characterized the relationship between the inventions of Groups I-IX as that of "subcombinations disclosed as usable together in a single combination".

However, Applicants note that each of the Groups I-IX as designated by the Examiner includes claims which depend from independent claim 6 which is direct to a "combination" (i.e., Group I includes claim 9; Group II includes claims 15-18; Group III includes claims 19-23; Group IV includes claims 25, 26; Group V includes claims 27-29; Group VI includes

claims 30-39; Group VII includes claims 40-48; Group VIII includes claim 10; and Group IX includes claims 13). Accordingly, Applicants submit that it is clear that these dependent claims can not properly be characterized as directed to “subcombinations”, but can only properly be characterized as direct to the “combination” (since by definition each of these dependent claims includes the subject matter of independent claim 6).

Applicants further submit that various of the claims 6, 7, 9, 10, 13 and 15-48 (which are all directed to the “combination”) serve as linking claims which prevent the newly presented claims 49-70 from being properly restricted out as “subcombinations”. In this regard, Applicants submit that “combination” claim 9 is a linking claim which prevents the restriction of claims 49 and 50 (note Group I as designated by the Examiner); “combination” claims 27-29 are linking claims which prevent the restriction of claims 51-54 (note Group V as designated by the Examiner); “combination” claims 30-39 are linking claims which prevent the restriction of claims 55-61 (note Group VI as designated by the Examiner); and “combination” claims 40-48 are linking claims which prevent the restriction of claims 62-70 (note Group VII as designated by the Examiner).

Accordingly, Applicants submit that the restriction requirement in this application is improper for at least this reason, and respectfully request that it be reconsidered and withdrawn.

*Examination of all claims would not present a "serious burden"*

In view of, and in addition to, the above-noted reasons, Applicants respectfully request that all of the inventions defined in claims 6, 7, 9, 10, 13 and 15-70 be examined in the instant application, pursuant to the guidelines set forth in M.P.E.P. §803. That is, the Examiner is respectfully requested to reconsider the restriction requirement and find that there would not appear to be a "serious burden" on the Patent and Trademark Office in examining claims directed to the non-elected inventions, particularly since the Examiner has already examined claims containing substantially similar subject matter as evidenced by the previous Official Action which considered the merits of original claims 1-48.

Further, it appears that the search for the inventions identified by the Examiner would be coextensive or at least significantly overlap. In this regard, Applicants note that it appears that the Examiner performed a prior art search for this subject matter in preparation of the previous Official Action. For these reasons, and consistent with office policy as set forth in M.P.E.P. 803, Applicants respectfully request that the Examiner reconsider and withdraw the restriction requirement.

For the foregoing reasons, it is submitted that the restriction requirement in this application is improper and it is respectfully requested that it be reconsidered and withdrawn.

Should there be any questions, the Examiner is invited to contact the undersigned at the below-listed telephone number.

Respectfully submitted,  
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